

REMARKS

This paper is submitted in response to the Office action dated April 7, 2009 (the “Office Action”).

Claims 1-117, 119, 122, and 124-130 are pending.

Claims 1-7, 14, 16-17, 29-35, 42, 44-45, 57-63, 70, 72-73, 85-91, 98, 100-101, 114-117, 119, and 124-130 stand rejected.

Claims 8-13, 15, 18-28, 36-41, 43, 46-56, 64-69, 71, 74-84, 92-97, 99, 102-112, and 122 are under objection.

Claim 113 has been allowed.

The amendments add no new matter. Support for the amendments may be found throughout Applicant’s Specification and Drawings as originally filed, for example in p. 12, lines 1-26. The amendments to the claims have been made to expedite prosecution. While not conceding that the cited reference(s) qualify as prior art, but instead to expedite prosecution, Applicant has chosen to respond as follows. Applicant reserves the right to establish that the cited reference(s), or other references cited thus far or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed. Applicant also reserves the right, for example in a continuing application, to pursue the previously pending claims or claims similar thereto. Applicant respectfully submits that the pending claims are allowable in view of the following remarks and the above amendments, and respectfully requests reconsideration of the pending rejections.

Allowable Subject Matter

Applicant expresses continued gratitude for the indication that objected claims 8-13, 15, 18-28, 36-41, 43, 46-56, 64-69, 71, 74-84, 92-97, 99, 102-112, and 121-122 would be allowable if rewritten in independent form including all the limitations of the respective base claims and any intervening claims. Applicant wishes to maintain these claims in dependent form in view of the following remarks regarding the allowability of the respective base claims.

Applicant expresses gratitude for the indication that claim 113 is allowed.

Rejection of Claims under 35 U.S.C. § 103

Claims 1-3, 29-31, 57-59, 85-87, 114-117, 119, 124, and 127 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,282,170 issued to Bentall et al. (“Bentall”), in view of U.S. Patent No. 2002/0118638, naming Donahue et al. as inventors (“Donahue”). Claims 4-7, 14, 16, 32-35, 42, 44, 60-63, 70, 72, 88-91, 98, and 100 stand rejected under § 103(a) as being unpatentable over Bentall in view of Donahue, and further in view of U.S. Patent No. 6,728,205 issued to Finn, et al. (“Finn”). Claims 17, 45, 73, and 101 stand rejected under § 103(a) as being unpatentable over Bentall and Donahue in view of Finn and further in view of U.S. Patent No. 6,430,150 issued to Azuma, et al. (“Azuma”). Claim 125 stands rejected under § 103(a) as being unpatentable over Bentall in view of Donahue and U.S. Patent No. 5,130,974 issued to Kawamura et al. (“Kawamura”). Claim 126 stands rejected under § 103(a) as being unpatentable over Bentall in view of Donahue and Kawamura, and further in view of U.S. Patent No. 4,287,592 issued to Paulish, et al. (“Paulish”).

Applicant respectfully submits that the claims are allowable under § 103(a) because a person having ordinary skill in the art would not make the proposed combination of references,

and because the cited portions of the references fail to disclose each limitation of Applicant's claims as presented prior to the above amendments.

Nonetheless, to further prosecution, Applicant has amended independent claims 1, 29, 57, and 85 as indicated above. As amended, independent claim 1 includes receiving information indicating that a candidate node has sufficient resources available to support a virtual path. The candidate node is configured to determine whether the candidate node has sufficient resources available to support the virtual path. The information is received from the candidate node, and is transmitted from the candidate node along a first physical path. Moreover, the first physical path is identified as an alternate physical path for the virtual path. At least these limitations are absent from the cited portions of the references, whether taken individually or in combination. At least for this reason, amended independent claim 1 and all claims dependent therefrom are allowable under § 103(a). At least for similar reasons, amended independent claims 29, 57, and 85 and all claims dependent therefrom are also allowable under § 103(a).

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance and a notice to that effect is solicited.

Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5097.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. The undersigned hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. §§ 1.16 or 1.17, be charged to deposit account no. 502306.

I hereby certify that this correspondence is being submitted to the U.S. Patent and Trademark Office in accordance with 37 C.F.R. § 1.8 on July 7, 2009 (CDT) by being (a) transmitted via the USPTO's electronic filing system; or (b) transmitted by facsimile to 571-273-8300; or (c) deposited with the U.S. Postal Service as First Class Mail in an envelope with sufficient postage addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia, 22313-1450.

/ Cyrus F. Bharucha /
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July 7, 2009
Date

Respectfully submitted,

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